IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

SECOND APPEAL NO.872 OF 2003

Shri Ramchandra Mahadeo Hawaldar — Appellant
vs.
Shri Dnyaneshwar Shripati Thule — Respondent

Mr.R.S.Apte for the appellant.

Mr.Girish S. Godbole for the respondent.

CORAM : ANOOP V. MOHTA,J.

DATED : 28th August, 2007

P.C.

The appellant-original plaintiff had filed Suit for possession of suit house bearing Survey No.38/2, Gat No.195 of village: Dongargaon, Taluka: Maval, Dist. Pune. The trial Court, after considering the material available including the evidence led by the parties held that the plaintiff failed to prove that he is owner of the suit house and, therefore, rejected the prayer for possession and also the claim for damages. The trial Court has also dismissed the Suit for want of jurisdiction.

2. The Appellate Court, after appreciating the entire pleading and material placed on record, has confirmed the finding and maintained the order of dismissal of the Suit basically on the following reasons:

(i) By filing purshis at Exh.90, the appellant/plaintiff had given up his right to claim possession of the suit house as landlord from the tenant or as lessor from the lessee. Even in his capacity as co-owner for want of pleading and material.

(ii) The suit being found to be based only on the title and treating the defendants as the tres-passers.

(iii) There is no material to justify that the appellant-plaintiff constructed the house walls and that his mother was staying in the house till 1985-86.

(iv) The possession of the defendant since 1984 of the suit premises remained undisturbed. If the house was constructed in 1984 there was no question of trespass by the defendant immediately in the year 1984 and further there was no question of being in possession of the suit house even prior to 1984.

(v) There are various contradictory and self-destructive pleading raised by the appellant/plaintiff.

(vi) Extract of Index "II" at Exhibit "124" being revenue record referring to Gat No.195 is not evidence of title of the house, as at the time of institution of the Suit it was in the name of respondent/defendant in

the Grampanchayat record.

(vii) The appellant admitted in the cross-examination that the House No.415 was never owned by him; that he had paid the taxes of the house only in the year 1990 that too in the name of the respondent/defendant.

(viii) The appellant/plaintiff, therefore, failed to discharge his initial burden proving the title and possession of the house.

(ix) The appellant/plaintiff failed to prove that he is owner of the suit house and so far as the land in question eventhough he is claiming to be as landlord without following the provisions of Section 29(2) of the Bombay Tenancy and Agricultural Act, he cannot claim possession.

(x) As noted the Suit is not for removal of encroachment of tres-passer or by constructing house on the other land. But it is for vacant possession of the suit land on the basis of title.

3. Both the Courts, therefore, having arrived at the concurrent finding based upon the material available on record, I find there is no perversity in the order. The reasoning given by both the Courts are within the frame

work of law and the record. Even after going through the reasoning as well as the evidence and material placed on record by the learned counsel for the appellant, I am of the view that there is no reason to interfere with the said finding.

4. Resultantly, the Second Appeal is dismissed.

[ANOOP V. MOHTA,J.]